

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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VICTORINOX AG, :

Plaintiff, :

- against - :

U.S. FLASH & TECHNOLOGIES LLC, B&B :
MEGA SERVICES LLC a/k/a XYZ :
ENTERPRISES, and MESMERIZED :
PRODUCTIONS INC. d/b/a :
LOGOPREMIUMS.COM :

Defendants. :

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FRANK MAAS, United States Magistrate Judge.

On October 21, 2010, I issued a Report and Recommendation (“R&R”) concerning the damages and attorneys’ fees to be awarded to plaintiff Victorinox AG (“Victorinox”) in this trademark infringement action following the default of defendant B&B Mega Services (“B&B”) (ECF No. 26). The R&R recommended that Victorinox be awarded \$600,000. (Id.).

By letter dated October 29, 2010, Victorinox’s counsel indicated that it did not “object[] to the ultimate conclusions in the [R&R],” but wished to “correct the record” to the extent that the R&R was based upon the fact that counsel had not submitted unredacted copies of its bills for legal services. (See letter from Andrew Gerber, Esq., to the Court, dated Oct. 29, 2010). As counsel explained, he had called my Chambers in July 2010 to ask “whether the submission of unredacted bills would be necessary, but was

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**SUPPLEMENTAL REPORT
AND RECOMMENDATION
TO THE HONORABLE
RICHARD J. HOLWELL**

09 Civ. 9266 (RJH) (FM)

advised that this would “not be necessary.” (Id. at 2). In his letter to Your Honor, counsel offered to submit copies of those unredacted bills to the Court for in camera review. (Id.).

In response, on December 21, 2010, Your Honor again referred the matter to me, this time for an inquest “[b]ased on in camera review of unredacted legal bills.” (ECF No. 27). Victorinox’s counsel delivered those bills to me on December 23, 2010. (See letter from Mr. Gerber to the Court, dated Dec. 23, 2010 (“Dec. 23 Letter”)). (The unredacted bills are annexed to the copy of this Supplemental R&R being delivered to your Chambers.)

Although the details of Victorinox’s pre-complaint investigation obviously are not known to me, it appears that Victorinox sued three unrelated alleged infringers in a single complaint. Additionally, Victorinox’s counsel apparently included time charges related to additional alleged infringers under a single matter, which is denominated “SWISS MEMORY USB INFRINGEMENTS.” (See Dec 23 Letter (Attach.)). Having reviewed the unredacted bills, I find no particular reason to quarrel with Victorinox’s allocation of its counsel’s block-billed time to Victorinox’s case against B&B. Nevertheless, I continue to believe that an award of \$600,000 adequately compensates Victorinox for both its Lanham Act statutory damages and its attorneys’ fees and costs. Accordingly, I again recommend that Victorinox be awarded judgment against B&B in the amount of \$600,000. I noted that Victorinox does not object to an award in this amount.

Procedure for Filing of Objections
to this Report and Recommendation

The parties shall have fourteen days from the service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. §636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. See also Fed. R. Civ. P. 6(a) and (d). Any such objections shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Richard J. Holwell and to the chambers of the undersigned at the United States Courthouse, 500 Pearl Street, New York, New York 10007, and to any opposing parties. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be directed to Judge Holwell. The failure to file these timely objections will result in a waiver of those objections for purposes of appeal. See U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); Thomas v. Arn, 474 U.S. 140 (1985).

Dated: New York, New York
January 10, 2011


FRANK MAAS
United States Magistrate Judge

Copies to:

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Hon. Richard J. Holwell
(with enclosures)